

## **REMARKS**

Claims 1-47 were pending and presented for examination and in this application. In an Office Action dated December 29, 2005, claims 1-47 were rejected. Claim 38 was cancelled in the Amendment of 12/10/07 and this amendment was indicated to have been entered by the Examiner in the Advisory Action of 7/23/09. Claims 15-47 are cancelled and new dependent claims 48-71 are added. In view of the Amendments herein and the Remarks that follow, reconsideration and withdrawal of all outstanding objections and rejections is now requested.

## **Interview Summary**

On May 13, 2011, Examiner Buchanan and Applicant's representative, Antonia Sequeira, discussed the pending claims. In the interest of furthering the case and of pursuing potentially allowable subject matter, the Examiner suggested amending independent claims 1 and 2 to incorporate additional material, such as that recited in claim 11. Applicant has amended the claims as suggested, has cancelled claims 15-47, and has added new dependent claims 54-65 that depend from claim 1 and generally mirror claims 3-14 depending from claim 2. Applicant has additionally added new dependent claims 48-53 that depend from claim 2. Applicant has further added new dependent claims 66-71 that depend from claim 1 and generally mirror dependent claims 48-53. Applicant thanks the Examiner for his time and consideration in this case.

## **Claims Recite Statutory Subject Matter under 35 U.S.C. §101**

Claims 1-14, 27-30, and 39-44 are rejected under 35 USC §101, as allegedly being based on non-statutory subject matter. This rejection was introduced in the Examiner's Answer of December 9, 2008, but was not repeated in the Examiner's Answer of July 9, 2009. In the BPAI Decision of March 22, 2011, the Board noted that the section 101 rejection was not repeated in

the Examiner's Answer of July 9, 2009, so the Board deemed this rejection to have been withdrawn by the Examiner. Thus, this rejection is considered withdrawn by Applicant, as well.

**Claims Not Obvious under 35 U.S.C. §103 in view of Kenney and Ono**

Claims 1-26, 36-38, and 42-43 are rejected under 35 USC §103(a) as allegedly being unpatentable in view of U.S. Patent No. 6,026,376 to Kenney ("Kenney") and U.S. Patent No. 5,909,023 to Ono et al. ("Ono"). This rejection was presented in the Office Action of December 29, 2005, the Examiner's Answer of October 12, 2007, the Examiner's Answer of December 5, 2007 (this Answer also added claims 39, 40, 41, and 44 to the rejection in view of Kenney and Ono), the Examiner's Answer of December 9, 2008, and the Examiner's Answer of July 9, 2009 (this Answer also dropped claims 39, 40, and 44 from the rejection in view of Kenney and Ono), and this rejection was addressed in the BPAI Decision of March 22, 2011. This rejection is respectfully traversed below.

In addition, claims 27-35 and 45-47 are rejected under 35 U.S.C. § 103(a) over a combination of Kenney, Ono, and U.S. Patent No. 5,655,174 to Hirst ("Hirst"). As claims 27-35 and 45-47 have been cancelled herein, this rejection is rendered moot.

Claim 1 now recites:

1. A method in a data processing system for automatically initiating the replenishment of a consumable product, comprising:
  - on a first date, fulfilling an order by a consumer for a first instance of the product;
  - based upon the first date, estimating a second date by which the first instance of the product will be fully consumed, wherein the second date is based at least in part upon a replenishment time interval between prior purchases, the prior purchases including at least one purchase of a complement of the consumable product;**
  - before the second date, providing to the consumer an indication that the product should be replenished, the indication including a control usable by the consumer to request replenishment of the product by performing a single action;

receiving an indication that the control was used by the consumer to request replenishment of the product; and  
**in response solely to receiving the indication, ordering a second instance of the product to replenish the first instance.**

Kenney and Ono, alone or in combination, do not teach at least “based upon the first date, estimating a second date by which the first instance of the product will be fully consumed, wherein the second date is based at least in part upon a replenishment time interval between prior purchases, the prior purchases including at least one purchase of a complement of the consumable product,” as recited in amended claim 1. Kenney describes electronic shopping in which the user can create a “reorder list” for reordering items, and this list can be “automatically maintained” based on the user’s “actual ordering history.” (Kenney, col. 21-34). Kenney explains that, “each time an actual order list is made, the historical list updates and determines ordering frequency such as by computing an average time between purchases of the same product.” (*Id.* at col. 11, lines 28-34). In other words, any updating of the reorder list in Kenney is performed based on the computed “average time between purchases *of the same product.*” (*Id.* (emphasis added)). Kenney does not describe estimating a second date based upon a determined replenishment time interval between prior purchases, where such purchases include purchase of *a complement of the product.*

Ono does not remedy this deficiency of Kenney. The Office Action does not rely upon Ono as teaching the estimation of the second date. However, even if Ono were now relied upon, Ono teaches, at best, calculating “a purchase interval of each good purchased by the user,” and transmitting “information of the good whose time corresponding to the purchase interval has lapsed.” (Ono, Abstract). In other words, Ono’s purchase interval is based on the time between purchases *of the same product.* Ono does not teach estimating a second date based upon a

determined replenishment time interval between prior purchases, where such purchases include purchase of *a complement of the product*. For at least these reasons, Kenney and Ono, alone or in combination, fail to teach this element of claim 1.

As a separate basis for distinction, Kenney and Ono also fail to teach at least “in response solely to receiving the indication, ordering a second instance of the product to replenish the first instance” recited in amended claim 1. Kenney relies on the user to make the reorder list, and the user must print the list so that the shopper can go shopping for reorder items. (*See* Kenney, col. 11, lines 21-24 (“To make a reorder list, the shopper enters the current date, the item to be reordered, and information regarding the reorder frequency, and stores the reorder list in memory.”); col. 11, lines 24-26 (“The list can be printed, and the shopper can then “go shopping” or end the session as desired.”)). In other words, the items are reordered in response to the user printing the list, going shopping for each item, and reordering each item. Even in Kenney’s description of automatically maintaining the reorder list, Kenney teaches, at best, updating the list and determining ordering frequency. (*Id.*). Kenney, however, does not teach ordering a second instance of the product in response *solely to receiving the indication* that the user used the control provided to request replenishment of the product. Any reordering performed in Kenney is in response to the consumer going shopping for the item and then selecting the item for reordering, not in response *solely to receiving indication* that the consumer used the control provided.

Ono does not remedy this deficiency of Keeney. Ono describes a server transmitting to the client information about goods whose purchase interval time has lapsed. (*See* Ono, col. 4, lines 28-49 (“The server 210 then transmits information of each good whose time corresponding to the purchase interval has lapsed, via the communication network 230 to the client 220 to

display it on the output unit 223.”)). Once the client has this information, the client “displays a list of goods” to the user, from which the “user can easily select and order” desired goods. (*Id.* at col. 4, lines 50-57). In other words, Ono teaches transmitting a list of goods to a user for which the purchase interval has lapsed, so the user can review the list, select each good for reordering, and reorder each good. Ono, however, does not teach ordering of a second instance of the product in response *solely to receiving the indication* that the user used the control provided to request replenishment of the product. Any reordering performed in Ono is in response to the user reviewing the list provided, selecting each item for ordering, and then ordering each item, not in response *solely to receiving indication* that the control provided to the consumer used. (*See id.* at col. 11, lines 24-34). For at least these reasons, Kenney and Ono, alone or in combination, fail to teach this element of claim 1.

Based on the above amendment and the remarks, for at least these reasons claim 1 is patentably distinguishable over the cited references. Independent claim 2 recites elements similar to those recited in claim 1, so is patentably distinguishable over the cited references for at least the same reasons. As to the dependent claims, because claims 54-71 depend from claim 1, all arguments advanced above with respect to claim 1 are hereby incorporated so as to apply to claims 54-71. In addition, because claims 3-14 and 48-53 depend from claim 2, all arguments advanced above with respect to claim 1, which recites elements similar to those recited in claim 2, are hereby incorporated so as to apply to claims 3-14 and 48-53.

In summary, there is no teaching in the prior art that anticipates or renders obvious the explicit recitation in the language of claims 1 and 2 that “based upon the first date, estimating a second date by which the first instance of the product will be fully consumed, wherein the second date is based at least in part upon a determined replenishment time interval for the

consumable product” or “in response solely to receiving the indication, automatically ordering a second instance of the product to replenish the first instance.” Therefore, the rejection should be withdrawn.

**Dependent Claims Not Obvious under 35 U.S.C. §103 in view of Kenney and Ono**

In addition to the elements of claims 1 and 2 noted above to be missing from Kenney and Ono, these references also fail to teach at least the element of “wherein the consumer has made a plurality of prior purchases of a complement of the first item, and wherein the target date is determined based on a length of intervals between the plurality of prior purchases of the complement of the first item” recited in dependent claim 11. Dependent claim 62 recites a similar element. Neither Kenney nor Ono provides a description of a determining the target date based on the purchase of a *complement* of the first item. Similarly, new dependent claims 50, 51, 68 and 69 also refer to the purchase of a complement of the product, which is not taught in Kenney and Ono. Thus, Kenney and Ono, alone or in combination, fail to teach the elements of claims 11, 60, 51, 62, 68, and 69.

Kenney and Ono further fail to teach at least the element of “wherein a second consumer has made a plurality of prior purchases of the first item, and wherein the target date is determined based on a length of intervals between the plurality of prior purchases of the first item made by the second consumer” recited in new dependent claim 49. Dependent claim 67 recites a similar element. Neither Kenney nor Ono provides a description of determining a target date based on prior purchases by a *second consumer*. Thus, Kenney and Ono, alone or in combination, fail to teach the elements of claims 49 and 67.

Kenney and Ono additionally fail to teach “wherein the indication that the product should be replenished is transmitted to the consumer at a time at which the consumer is not engaged in

an electronic shopping activity” recited in new dependent claim 52. Dependent claim 70 recites a similar element. The Office Action relies on Ono for the teaching of providing the indication that the product should be replenished. However, Ono’s indication is provided while the consumer is engaged in electronic shopping. For example, Ono explains that, “[t]o start online shopping, the user enters a user identifier (ID) from the input unit 222 of the client 220,” which is “transmitted from the client 220” to the server 210. (Ono, col. 4, lines 28-33). The server 210 then “searches the purchase history information,” “judges...whether the time corresponding to the purchase interval calculated...has lapsed,” and “transmits information of each good whose time corresponding to the purchase interval has lapsed, via the communication network 230 to the client 220 to display it on the output unit 223.” (*Id.* at col. 4, lines 41-49). In other words, the transmission in Ono is provided during online shopping by the user. In fact, the user must enter in his user identifier in order to even begin the search of the purchase history on which the transmission is based, and Ono uses the user identifier to access the correct purchase history information. (*See id.* at col. 2; lines 2-16 and 26-41; col. 4, lines 60-67; col. 8, lines 29-39; col. 11, lines 12-14; col. 12, lines 11-15 and 46-49; col. 13, lines 19-23 and 59-62; col. 14, lines 27-31; Abstract; Figs. 1, 3, 14, 15 (step 101)). Neither Kenney nor Ono teach transmission of the indication that the product should be replenished *at a time at which the consumer is not engaged in electronic shopping activity*. Thus, Kenney and Ono, alone or in combination, fail to teach the elements of claims 52 and 70.

Kenney and Ono also fail to teach “wherein the steps of estimating the target date, providing the indication, and ordering the second item all occur without intervention of the consumer other than the use of the control by the consumer to request replenishment” recited in new dependent claim 53. Dependent claim 71 recites a similar element. Kenney relies on the

user to make the reorder list. (*See* Kenney, col. 11, lines 21-24 (“To make a reorder list, the shopper enters the current date, the item to be reordered, and information regarding the reorder frequency, and stores the reorder list in memory.”)). In addition, Kenney makes clear that the user must print the list so that the shopper can go shopping for reorder items. (*See id.* at col. 11, lines 24-26 (“The list can be printed, and the shopper can then “go shopping” or end the session as desired.”)). Even in Kenney’s description of automatically maintaining the reorder list, Kenney teaches, at best, updating the list and determining ordering frequency, but does not teach ordering a second item from the list without intervention of the consumer, since the consumer must still “go shopping” for the item. (*Id.* at col. 11, lines 24-34). So, Kenney does not order a second item *without intervention of the consumer*. In addition, Ono relies on the user to first input a “user identifier” in order for the server to search the purchase history information and transmit information about goods whose purchase interval time has lapsed. (*See* Ono, col. 4, lines 28-49). So, Ono does not provide an indication regarding replenishment *without intervention of the consumer*. Thus, Kenney and Ono, alone or in combination, fail to teach the elements of claims 53 and 71.

### **Conclusion**

In sum, the claims presented herein are patentably distinguishable over the cited references (including references cited, but not applied). Therefore, a request for reconsideration of the basis for the rejections to these claims and allowance of them is now made.

Respectfully Submitted,

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